



State Ethics Commission

Ethics Education & Lobbying Refresher Presentation Chapter 138A & Chapter 120C

(Rev'd 03/11/09)

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Overview of Presentation

- Goal of State Ethics & Lobbying Laws
- State Ethics Commission
 - Who we are
 - What we do
- Advice & Advisory Opinions
- Complaints
- Duties & Responsibilities of Public Servants
 - Education
 - SEI Filing
 - Conflicts of Interest & Other Ethical Standards
 - Gifts: Gift Ban & Exceptions
 - Special Prohibitions
- Lobbying: Why it matters to Public Servants

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State Ethics Commission

Who We Are

- 8 members appointed by Governor & General Assembly.
- Function in a non-partisan manner.
- Certain restrictions on political activities of Commission members & staff.

What We Do

1. **Assist Individuals in Complying with the Ethics Act.**
 - Education
 - Informal Advice from Commission staff
 - Formal Advisory Opinions
2. **Investigate Complaints.**
3. **Administer SEI process.**

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State Ethics Commission Staff & Contact Information

- Perry Newson, Executive Director
- Kathleen Edwards, Assistant Director/Compliance Officer
- Sue Lundberg, Lobbying Director
- Stacey Phipps, SEI Attorney
- Mary Shuping, Education Officer
- Christy Tillery, Paralegal
- Beth Carpenter, Administrative Assistant
- Sallie Newton, Administrative Assistant
- Lisa Cole, Education Assistant
- Amy Grindstaff, Receptionist
- **Mailing Address**
1324 Mail Service Center
Raleigh, NC 27699-1324
- **Street Address**
424 North Blount Street
Raleigh, NC 27601-1010
- **Phone & Fax**
Phone: 919-715-2071
Fax: 919-715-2059
- **E-mail:**
ethics.commission@doa.nc.gov
- **Website:**
www.ethicscommission.nc.gov

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ADVICE/ADVISORY OPINION

FAQ's (G.S. 138A-13)

- **Who Can Request Advice or Advisory Opinions?**
 - Public servants, legislative employees, individuals responsible for supervision or appointment of a public servant or legislative employee, or legal counsel.
 - Legislators.
 - Ethics Liaisons for agencies or boards.
 - State Ethics Commission on its own motion.
 - Judicial officers concerning SEI's only.
 - State Auditor as to the meaning and application of the Ethics Act.
- **When Should I Make a Request?** Requests for advice & advisory opinions must be ***prospective*** & relate to ***real or reasonably anticipated*** facts or circumstances. No hypotheticals.

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- **Is My Request Confidential? YES.** Informal advice & formal advisory opinions are confidential.
 - Identity of requester, existence of request, & any information related to the request, including all documents, are confidential.
 - Requester can waive confidentiality and authorize release.
 - The Commission must publish ***redacted*** formal advisory opinions on its website.
- **Can someone else ask about the legality of my actions?**
 - Generally, there are no third-party requests for advice or advisory opinions.
 - Except as authorized by the statute, advice and advisory opinions ***will not*** be issued to individuals seeking an opinion as to the legality of the actions of someone else.

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“Informal” Advice v. Formal Advisory Opinions

(G.S. 138A-13)

Informal Advice	Formal Advisory Opinion
Request can be written or by phone	Request <u>must</u> be in writing
Confidential	Confidential
<ul style="list-style-type: none"> ■ Issued by staff ■ No immunity 	<ul style="list-style-type: none"> ■ Issued by Commission ■ Confers immunity.
Not published	Published in redacted form within 30 days of issuance by the Commission.

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What does it mean to have “immunity”?

(G.S. 138A-13(a2))

Reliance on the advice in a formal advisory opinion gives you immunity from:

- Investigation by the State Ethics Commission.
- Adverse action by your employing entity (agency, board, etc.)
- Investigation by the Secretary of State.
- Only applies to formal advisory opinions. No immunity for advice issued by Commission staff.
- **Does not** confer immunity for violations of criminal law in performance of official duties.

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COMPLAINTS & INQUIRIES

(G.S. 138A-12)

- **Persons Subject.** Public servants, legislators; legislative employees & judicial officers.
- **Commission's Jurisdiction.** Investigation of:
 - Application or violation of the ethics act.
 - Alleged violations of criminal law by covered persons acting in their official capacity.
 - Alleged violations of G.S. 126-14 (Promise or threat to obtain political contribution or support)
 - For legislators, alleged violations of the Legislative Ethics Act.
- **Filing a Complaint.** Anyone may file a complaint, including public servants, the Commission itself, any person responsible for appointing, hiring, or supervising a public servant, and *any individual*

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- **Requirements for a Valid Complaint.**
 - In writing, signed & sworn (Complaints & inquiries filed by public servants or the Commission do not have to be sworn.)
 - State when the alleged violation occurred.
 - Filed within 2 years of date filer knew or should have known of the alleged improper conduct.
- **Notification.** The Commission must notify the covered person immediately upon receiving a written allegation of unethical conduct.

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- **Confidentiality.** Complaints, responses, and other investigative documents related to the inquiry are **confidential**, unless:
 - Respondent requests that records be made public, i.e., waives confidentiality.
 - A hearing commences; or
 - Sanctions are recommended without a hearing.
- **Process After Complaint Filed.**
 - Preliminary Inquiry.
 - Probable Cause Determination.
 - Hearing or Referral.
- **Violation Consequences.**
 - **Public Servants Who Are Employees:** Willful noncompliance considered violation of written work order.
 - **Public Servants on Boards:** Misfeasance, malfeasance, or nonfeasance & may be removed.

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DUTIES & RESPONSIBILITIES OF PUBLIC SERVANTS

- **Public disclosure of financial interests through SEI filing.**
- **Monitor & avoid conflicts of interest.**
- **Do not accept prohibited gifts.**
- **Attend ethics education presentations.**
- **Agency heads have special responsibilities.**
- **Agency heads must designate Ethics Liaisons to assist in complying with ethics laws.**

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EDUCATION

(G.S. 138A-14 & -120C-103(a))

- Ethics & lobbying education required of:
 - All public servants & their *“immediate staff”* – individuals reporting directly to the public servant (also called “direct reports”)
 - Within 6 months of election, appointment, or employment
 - Legislators & legislative employees
 - Within 3 months of election, appointment, or employment
- Refresher training required at least every 2 years
- **REMINDER:** Immediate staff (“direct reports”) *only* subject to education requirement.

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SEI FILINGS: Frequently Asked Questions.

(G.S. 138A-21 – 138A-37)

Who has to file?

- Most “covered persons.”
- Candidates for covered offices.
- Exception: certain employees who are covered by the Ethics Act but make less than \$60K per year.

What is the filing deadline?

- **Annual filing deadline – April 15th**
- **New Hires or Appointees:** A prospective covered person “shall not be appointed, employed, or receive a certificate of election” prior to the receipt *and evaluation* of their SEI.
- **Exception for Appointees of Constitutional Officers:** Individuals hired or appointed by constitutional officer within the first 60 days of the constitutional officer’s initial term have 30 days from being hired or appointed to file their SEI.
- **Provisional Appointments by Community Colleges & Universities:** SEI must be filed but does not have to be evaluated prior to being hired, appointed, or elected.

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Is there a “short” form this year?

■ Yes! There are 3 forms:

- Long Form
- No Change Form
- Amendment to SEI Form
- You can access the forms on the Commission’s website.

■ What has to be disclosed? Generally certain financial, professional, familial, and personal information.

■ Who is included in the disclosure? Yourself; spouse (unless legally separated); unemancipated child residing in the household; members of your “extended family” who are living with you, including:

- Your spouse.
- You & your spouse’s lineal descendants & their spouses.
- You and your spouse’s lineal ascendants & their spouses.
- You & your spouse’s siblings & their spouses.

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Additional reporting requirements for public servants (G.S. 120C-800(b) & (d))

What & Value	Reportable expenditure valued over \$200/calendar quarter	Scholarship (grant-in-aid to attend meeting) valued over \$200
From	Person ■Outside NC ■Not required to register	Person ■Outside NC ■Not required to register
Why	Made for purpose of lobbying	Scholarship related to public service or position
Where Accepted	You were outside NC when accepted	You were either in NC or outside NC
Reporting	You must report date, description, name of person, & estimated FMV either to Secretary of State or on SEI	You must report date, event, name of person granting scholarship, & estimated FMV either to Secretary of State or on SEI

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SEI FORMS

- On website & .pdf fillable.
- No electronic filing at this time.
- Make sure file correct form.
- Postmarked or delivered to SEC by April 15th.

SEI FILING TIPS

- Answer ***all*** questions.
- Signed.
- Notarized.
- Original.
- Postmarked by April 15th of each year.
- If you forget or need to correct something on SEI, should amend ASAP.

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SEI EVALUATIONS

- **Evaluations.**
 - The Commission is required to evaluate SEI's of public servants for "actual and potential" conflicts of interest.
- **Public Records.**
 - SEI & written evaluations are public record once the individual is appointed or employed.

VIOLATION CONSEQUENCES

- **Penalties for Late or Non-Filing**
 - \$250 civil penalty.
 - May result in removal from public position.
- **Criminal Penalties.**
 - Class 1 misdemeanor for knowing concealment or failure to disclose.
 - Class H felony for knowingly providing false information.

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"GOLDEN RULE" OF CONFLICT AVOIDANCE

(G.S. 138A-31(a) & -36(a))

**You cannot knowingly use your
public position to financially
benefit yourself, your family, or
your business.**

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Conflicts of Interest

WHAT KIND OF ACTION? "Official Action".

- **Any decision**, including administration, approval, disapproval, preparation, recommendation, rendering of advice, and investigation.
- **Made or contemplated in any proceeding**, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule-making.

WHAT KIND OF BENEFIT? "Financial Benefit". Direct pecuniary gain or loss to public servant, a person with which associated, or a direct pecuniary loss to a business competitor of the public servant, or a person with which associated.

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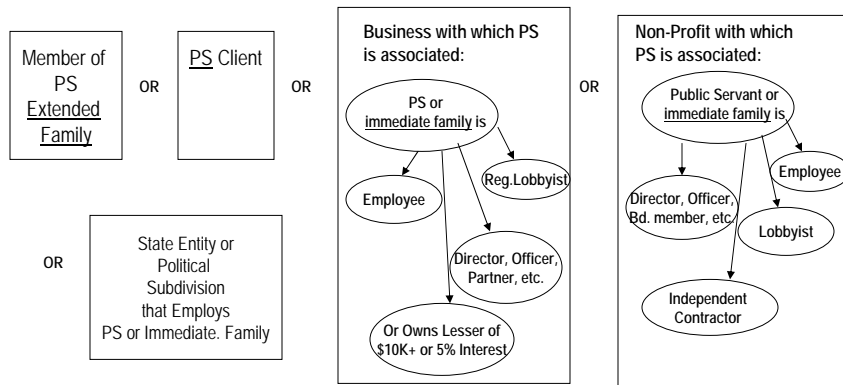
WHO BENEFITS?

- Public servant or
- “Person with which associated”
 - Extended Family (spouse, lineal descendant, lineal ascendant, sibling, spouse’s lineal descendant, spouse’s lineal ascendant, spouse’s sibling, and spouse of any of these individuals)
 - Client
 - Business with which associated
 - Non-profit with which associated
 - State, political subdivisions of State, board, or any other entity or organization created by the State or a political subdivision of the State that employs the public servant or immediate family

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ANALYSIS: G.S. 138A-36(a) (Limited by G.S. 138A-38 Safe Harbor)

I. - Public Servant may not participate in Official Action if Public Servant Knows that he/she or a Person With Which Associated:



- May Incur a Reasonably Foreseeable Financial Benefit from the action.

AND

II. Financial Benefit would Impair PS's Independence of Judgment or it could be reasonably inferred that benefit would influence participation.²²

Relationship with “Participant in the Proceeding”

G.S. 138A-36(c)

- Public servant has duty to remove himself or herself from any proceeding in which impartiality might reasonably be questioned to due a familial, personal, or financial relationship with a ***“participant in the proceeding”***
 - Employee, agent, officer or director of a business, organization or group involved in the proceeding; **OR,**
 - Has some specific unique, and substantial interest in the proceeding.

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“SAFE HARBORS” (G.S. 138A-38)

YOU *MAY* TAKE LEGISLATIVE OR OFFICIAL ACTION *IF*

- i. THE BENEFIT IS NO GREATER THAN BENEFIT TO ALL MEMBERS OF PROFESSION, OCCUPATION, OR GENERAL CLASS.
- ii. ACTION WOULD AFFECT COVERED PERSON'S COMPENSATION & ALLOWANCES AS A COVERED PERSON.
- iii. A WRITTEN ADVISORY OPINION AUTHORIZED THE PARTICIPATION.
- iv. BEFORE PARTICIPATING, PUBLIC SERVANT DISCLOSED INTEREST TO EMPLOYING ENTITY WHICH DETERMINED INTEREST WOULD NOT INFLUENCE PS & DETERMINATION WAS FILED WITH THE COMMISSION.
- v. YOU ARE PERFORMING MINISTERIAL ACT.

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- vi. NO QUORUM -- COVERED PERSON MAY BE INCLUDED FOR PURPOSES OF ESTABLISHING A QUORUM.
- vii. PUBLIC SERVANT IS THE ONLY INDIVIDUAL HAVING LEGAL AUTHORITY TO TAKE AN OFFICIAL ACTION & DISCLOSES INTEREST.
- viii. COMMUNITY COLLEGE OFFICERS & BOARD MEMBERS MAY SERVE ON NONPROFITS ESTABLISHED TO AID THE COMMUNITY COLLEGE UNDER CERTAIN CIRCUMSTANCES.
- ix. LEGISLATORS EMPLOYED OR RETAINED BY GOVERNMENTAL UNITS MAY TAKE LEGISLATIVE ACTION ON BEHALF OF THE GOVERNMENTAL UNIT IF ONLY MEMBER OF THE CHAMBER ELECTED FROM THAT DISTRICT AND RELATIONSHIP IS DISCLOSED.

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GENERAL RULE IF YOU HAVE A CONFLICT:

- **DISCLOSE** the conflict.
- **RECUSE.** REFRAIN FROM PARTICIPATING IN WRITING OR VERBALLY – NO INDIRECT INFLUENCE

WAYS TO AVOID CONFLICTS:

- Review your SEI evaluation letter issued by State Ethics Commission.
- For board & commission members, review agendas in advance.
- Request informal advice or a formal advisory opinion **in advance.**

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OTHER ETHICAL STANDARDS

Nongovernmental Advertising. Cannot mention or permit someone else to mention your public position in nongovernmental advertising that advances your or another's private interests. (G.S. 138A-31(b))

- Does not apply to: political ads; news stories & articles; inclusion in biographical listing or directory; 501(c)(3) charitable solicitations.
- Not advertising to disclose position to individual customer or client when relevant or material.

Employment/Supervision of Family Members. Prohibits employment & supervision of family members except for certain General Assembly positions. (G.S. 138A-40)

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Public Service Announcements. Cannot use State funds for advertisement or public service announcement in newspaper, radio, TV, magazines, or billboards containing name, picture, or voice. (G.S. 138A-31(c))

- Exception for emergency & announcement necessary to official duties.
- Does not apply to public radio/TV fundraisers.

Cannot Be Paid Twice. Personal financial gain by public servant or legislative employee for performing official duties is prohibited. (G.S. 138A-33)

Cannot Misuse Confidential Information. Cannot use inside information obtained in course of duties for private gain. (G.S. 138A-34)

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OTHER ETHICAL STANDARDS: LIMITATIONS ON CHARITABLE SOLICITATIONS

(G.S. 138A-32(b))

- Covered persons cannot solicit charitable donations from subordinate State employees.
- Exceptions:
 - Generic solicitations to a class.
 - Serve as honorary State Employees' Combined Campaign chair

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NO "QUID PRO QUO"

(G.S. 138A-32(a))

- Cannot accept, demand, exact, solicit, seek, assign, receive, or agree to receive
- Anything of value
- For you or another person
- In return for being influenced in the discharge of your official responsibilities
- Excludes: what is received from the State for acting in your official capacity

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GENERAL GIFT BAN

(G.S. 138A-32 & G.S. 120C-303)

Unless there is an exception, public servants cannot accept, directly or indirectly, "gifts" from:

- Lobbyists
- Lobbyist Principals
- "Interested Persons"

In addition, unless there is an exception:

- Lobbyists & lobbyist principals cannot give gifts to public servants, legislators, or legislative employees.
- "Liaison Personnel" (State agency "lobbyists") cannot give gifts to legislators or legislative employees.

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Indirect Gifts

Gifts may not be accepted indirectly through an intermediary if you know

- The gift was obtained indirectly from a
 - Lobbyist; or,
 - Lobbyist Principal; or,
 - Interested Person; and,
- The lobbyist, lobbyist principal, or interested person intended for you to receive the gift.

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Who are they?

- Lobbyists & Lobbyist Principals must be registered with the Secretary of State's Office. A list of names can be found at www.secretary.state.nc.us/lobbyists/
- "Interested Persons" are persons who:
 - Are doing or seeking to do business with your employing entity (agency, board, office, etc.); or,
 - Are engaged in activities that are regulated or controlled by your employing entity; or,
 - Have financial interests that may be substantially & materially affected by the performance or nonperformance of your official duties. (G.S. 138A-32(d))

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What is a "Gift"?

(G.S. 138A-3(15))

- A gift is anything of monetary value that you receive from lobbyist, lobbyist principal, or interested person.
- **No de minimis exception!**
- Note: gift includes food & beverage.

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What isn't a "gift"?

(G.S. 138A-3(15))

- Something you paid fair market or face value for.
- Commercially available loans made on same terms & not for purpose of lobbying.
- Contractual or commercial arrangements not made for purpose of lobbying.
- Academic or athletic scholarships.
- Campaign contributions.
- Certain expressions of condolence.
- Cards, letters, notes, e-mails, etc (SEC determination)

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IS IT A GIFT? 138A-3(15) EXCLUDES:

- THINGS FOR WHICH YOU PAID MARKET OR FACE VALUE,
- LOANS AND SCHOLARSHIPS AVAILABLE TO EVERYONE AND ON THE SAME TERMS,
- ARMS-LENGTH BUSINESS TRANSACTIONS
- CAMPAIGN CONTRIBUTIONS UNDER CHAPTER 163,
- EXPRESSIONS OF CONDOLENCE (CARDS, FLOWERS, FOOD OR BEVERAGES, DONATIONS UP TO \$200).

Public Servants

Is the gift given (funded)
directly or indirectly by a
Registered LP, L, or an IP?

NO. Then the Public
Servant may accept it.

YES. Then Public Servant
may not
accept it UNLESS it falls
within a gifts exception.

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EXCEPTIONS

- There are exceptions to the gift ban.
- Specific criteria must be met for each one.
- Gifts from lobbyists, lobbyist principals & liaison personnel generally must be reported to the Secretary of State's Office.
- Generally, reports must include the name of the recipient, along with the value and description of the gift.

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What are the exceptions?

(G.S. 138A-32(e))

1. FOOD & BEVERAGE AT CERTAIN GATHERINGS.
2. INFORMATIONAL MATERIALS RELEVANT TO OFFICIAL DUTIES.
3. EXPENSES OF ATTENDING CERTAIN MEETINGS/ CONFERENCES.
4. PLAQUE OR SIMILAR NON-MONETARY MEMENTO RECOGNIZING SERVICE TO FIELD OR CHARITY.
5. GIFTS ACCEPTED ON BEHALF OF THE STATE FOR USE BY OR BENEFIT OF THE STATE.
6. ANYTHING MADE AVAILABLE TO THE GENERAL PUBLIC OR ALL OTHER STATE EMPLOYEES.

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Exceptions (cont'd)

7. GIFTS FROM EXTENDED FAMILY OR MEMBER OF SAME HOUSEHOLD.
8. GIFTS GIVEN TO A PUBLIC SERVANT RESPONSIBLE FOR CONDUCTING INDUSTRY RECRUITMENT, INTERNATIONAL TRADE, OR TOURISM PROMOTION.
9. GIFT VALUED AT LESS THAN \$100 GIVEN AS A PERSONAL GIFT IN ANOTHER COUNTRY IN ACCORDANCE WITH CULTURAL PROTOCOL.

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Exceptions (cont'd)

10. GIFTS GIVEN AS PART OF A BUSINESS, CIVIC, RELIGIOUS, FRATERNAL, PERSONAL, ETC. RELATIONSHIP UNDER CERTAIN CIRCUMSTANCES.
11. MEAL, BEVERAGE, & TRANSPORTATION EXCEPTION FOR ATTENDANCE AT MEETING OF ENTITY WITH WHICH ASSOCIATED.
12. "OFFICIAL DUTY" MEAL & BEVERAGE EXCEPTION FOR PUBLIC SERVANTS.

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Exception for Gifts Given Directly to Organization

(G.S. 120C-303(d)-(e))

Gifts are allowed if they are made

- Made by a lobbyist or lobbyist principal to
- Nonpartisan state, regional, national, or international organization of which
- General Assembly or public servant's agency is a member; or,
- Legislator, legislative employee, or public servant is a member or participant by virtue of his/her public position.

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Reimbursement Exception: Public Servants

(G.S. 138A-32(f))

- If the gift is the type of expense that would otherwise be reimbursable by the employing entity, it is considered a gift to the State and may be accepted by the public servant **if**
- **Approved:** Approval is received in advance from the employing entity to accept such items on behalf of the State.
- **Not Limited:** As long as the type of item or expense is reimbursable, items or expenses exceeding the reimbursement rate may be accepted.

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COMMON EXCEPTIONS IN MORE DETAIL

- Food & Beverage Exceptions.
- Meeting/Conference Exceptions.
- Public Servant “Official Duty” Meal & Beverage Exception.
- Personal Relationship Exception.
- Leader/Employee/Independent Contractor’s Meeting or Conference Exception.

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Food & Beverage Exceptions 1 & 2: Public Meetings & Gatherings (G.S. 138A-32(e)(1))

WHO can give?	Lobbyist, lobbyist’s principal, liaison personnel, interested persons
WHAT can be given?	Only food & beverage for immediate consumption
WHERE must it happen?	<ol style="list-style-type: none"> 1. Open Meeting of Public Body 2. Gathering Open to Public <ul style="list-style-type: none"> ■ Gathering of organization ■ 10 or more people attend ■ Open to general public ■ Sign or other communication displayed at meeting that conveys gathering is open
Who has to be INVITED?	No specific requirements for who must be invited.

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Food & Beverage Exception 3: Gathering of Person or Governmental Unit

WHO can give?	Lobbyist, lobbyist's principal, liaison personnel, interested persons.
WHAT can be given?	Only food & beverage for immediate consumption.
WHERE must it happen?	Gathering of person or governmental unit (local government).
Who has to be "INVITED"?	<p>Group 1: All House or Senate members; all members of county or municipal legislative delegation; recognized caucus; committee/commission of General Assembly; all legislative employees; public servant's entire board; <u>or</u> at least 10 public servants; <u>and</u>.</p> <p>Group 2: At least 10 people associated with person or govt. unit <u>actually</u> attend; <u>or</u> all shareholders, employees, bd. members, officers, members, subscribers located in NC are invited.</p>
("Invited:" Written; from at least 1 host or sponsor; give date, time, location; sent at least 24 hours in advance; & if known at time invitation sent that sponsor is lobbyist or lobbyist principal, invitation must state whether or not gathering meets gift ban exception.)	

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Meeting & Conference Exceptions G.S. 138A-32(e)(3)

1. What TYPES of meetings are included?	<ul style="list-style-type: none"> I. Educational II. Speaker/Panel Member III. Nonpartisan Organization: Legislature IV. Nonpartisan Organization: State Agency
2. WHO can pay for certain meeting expenses?	Lobbyist <i>Principals</i> – <u>Not</u> lobbyists, liaisons, or interested persons
3. WHERE must it take place?	<ul style="list-style-type: none"> ▪ "Formal" Meeting
4. WHAT can be given?	<ul style="list-style-type: none"> ▪ Food & Beverage ▪ Registration ▪ Travel ▪ Lodging ▪ Incidental Items of Nominal Value ▪ Incidental Entertainment

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Certain Meeting/Conference Expenses:

TYPES of Meetings

G.S. 138A-32(e)(3)

I. Educational Meeting:

Attendance at:

- ***“Educational”*** meeting for
- Purposes primarily related to person’s public duties & responsibilities.

Commission has established criteria to determine if meeting is “educational.”

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What is an “Educational” Meeting?

SEC has adopted non-exclusive factors in formal advisory opinion AO-L-07-003:

1. **Educational Content.**
2. **Primary Purpose.**
3. **Entity Holding Meeting.**
4. **Is Lobbyist Principal also the Sponsor.**
5. **Agenda.**
6. **Location.**
7. **Length.**
8. **Personal Benefit.**
9. **Other Factors.**

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Certain Meeting Expenses: **TYPES** of Meetings (*cont'd*)

II. **Speaker/Panel Member**

Participation as bona fide speaker or panel member at a meeting.

III. **Nonpartisan Organization: General Assembly**

Legislator/legislative employee's attendance and participation in meetings of nonpartisan organization of which General Assembly is member; *or*, legislator/legislative employee is member or participant because of public position, or member of subgroup of the nonpartisan organization.

IV. **Nonpartisan Organization: Public Servant's Agency**

Public servant's attendance and participation in meetings as member of board, agency, or committee of nonpartisan organization of which public servant's agency is member; *or* public servant is member because of public position.

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WHERE must it take place?

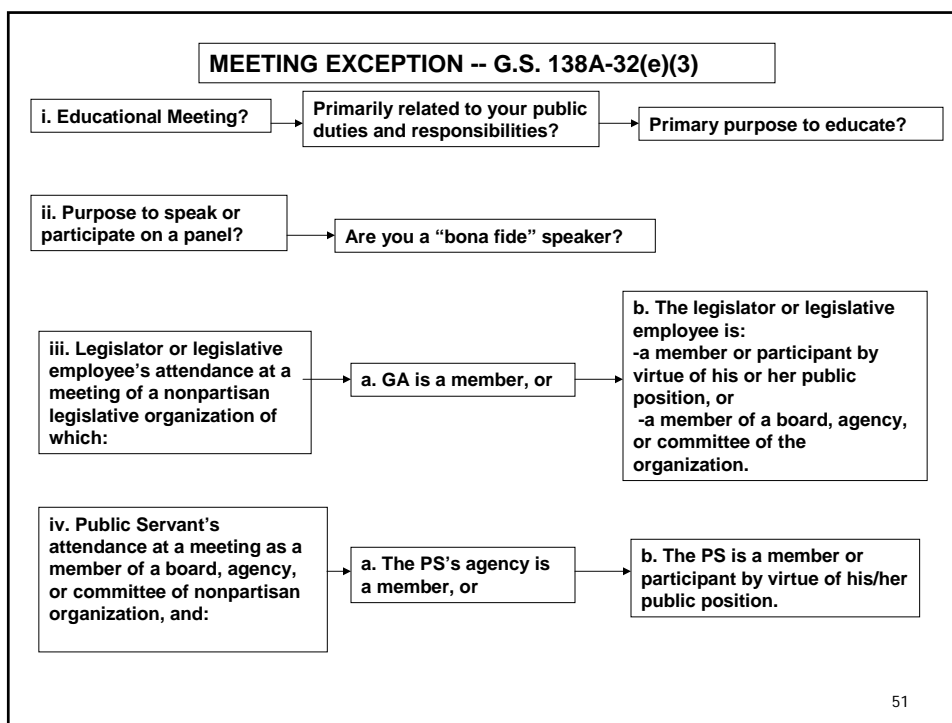
- Meeting;
- Attended by at least 10 or more participants;
- Formal Agenda; *and*,
- Notice given at least 10 days in advance.

WHAT can be given?

Reasonable actual expenditures for:

- **Registration, Travel, Lodging, & Incidental Items of Nominal Value.**
- **Food, beverage, transportation**
 - Provided to all attendees *or* defined groups of 10 or more attendees as part of/in conjunction with meeting.
- **Entertainment**
 - Provided to all attendees *or* defined groups of 10 or more attendees as part of/in conjunction with meeting; *and*,
 - Incidental to principal agenda.

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PUBLIC SERVANT "OFFICIAL DUTY" EXCEPTION
G.S. 138A-32(e)(12)

WHAT IS IT & WHERE CAN IT BE GIVEN?

- Organized gathering of "person," the State, or "governmental unit"

WHO can GIVE?

- Anyone – Lobbyist, lobbyist principal, liaison personnel, interested persons

WHAT can be given?

- Food and beverage for immediate consumption.

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Public Servant "Official Duty" (*cont'd*)

■ WHO must be INVITED?

- Public servant must be invited for purposes related primarily to public servant's service or position; ***and***,
- 10 individuals, other than public servant or immediate family, **actually** attend; ***or***,
- All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in NC notified and invited.

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PUBLIC SERVANT "OFFICIAL DUTY" MEAL & BEVERAGE EXCEPTION

G.S. 138A-32(e)(12)

- APPLIES ONLY TO PUBLIC SERVANTS
- EVENT MUST BE PRIMARILY RELATED TO OFFICIAL DUTIES
- APPLIES TO ALL CATEGORIES OF DONORS — Lobbyists, Lobbyist Principals, Interested Persons, Liaison Personnel
- LIMITED TO THE ACCEPTANCE OF FOOD AND BEVERAGES FOR IMMEDIATE CONSUMPTION -- NO TRAVEL OR TRINKETS

- ONE OR MORE PUBLIC SERVANTS INVITED

- PRIMARILY RELATED TO DUTIES OR POSITION

AND

10 INDIVIDUALS
OTHER THAN PS OR
FAMILY ATTEND

=

MAY ATTEND

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GIFTS BASED ON CERTAIN RELATIONSHIPS

G.S. 138A-32(e)(10)

- Gifts given or received as
- Part of business, civic, religious, fraternal, personal, or commercial relationship; **IF**,
 - Relationship is not related to public service or position; **AND**;
 - Reasonable person would conclude gift not given for purpose of lobbying.

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LEADER/EMPLOYEE/INDEPENDENT CONTRACTOR MEETING EXCEPTION

"Eat Your Own Lunch"

G.S. 138A-32(e)(11)

- **WHO can ACCEPT?**
 - Person who is director, officer, board member, employee or independent contractor of either
 - Lobbyist principal giving food, beverage, transportation; **or**,
 - 3rd party that received funds from lobbyist principal to purchase food, beverages, or transportation
- **WHO can GIVE?**
 - Lobbyist *Principal*. **NOT** lobbyist.
- **WHAT can be given?**
 - Food and beverage for immediate consumption & related transportation
- **WHERE can it be given?**
 - During conference, meeting, or similar event; **and**,
 - Available to all attendees of same class as recipient

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SPECIAL PROHIBITION: HONORARIA
Payment for services for which fees are not
traditionally or legally required.

(G.S. 138A-32(h))

You **cannot** accept an honorarium **if**

- Your agency reimburses you for travel, subsistence, & registration; **or**,
- Your agency's work time or resources are used; **or**,
- Activity would be considered, or bear a reasonably close relationship to, an "official duty."

"Official Duty" = "But For." But for your public position, you would not be making the speech, performing the service, etc.

- **In lieu of an honorarium**, an outside source may reimburse the agency for actual expenses incurred in conducting the activity, or may pay a fee to the agency, in lieu of the honorarium.

- This is not considered a "gift."

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SPECIAL PROHIBITION:
UNIVERSITY ATHLETIC
TICKETS (G.S. 120C-501(e))

- The UNC Board of Governors, its constituent institutions, and liaison personnel are prohibited from giving athletic tickets, for the purpose of lobbying, to legislators, legislative employees, or public servants.

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If you receive an impermissible gift...

Promptly

- **Decline** it.
- **Return** it.
- **Pay** FMV for it.
- **Donate** it to charity or the State.

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Gift Analysis

1. **WHO am I?** Public Servant 24/7
2. **WHO is giving it?** Lobbyist, Lobbyist Principal, Interested Person
3. **WHAT is it?** "Gift"
4. **WHERE is it being given?**
5. **Is there an EXCEPTION?**

ALWAYS FEEL FREE TO ASK THE STATE ETHICS COMMISSION!!!

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LOBBYING: Why the lobbying law is important.

- Public servants can now *be* lobbied.
 - Executive branch lobbying is now regulated.
- Executive branch agencies must designate “liaison personnel” to lobby for legislative action.
 - No more than 2 per agency or constitutional office, including boards & commissions.
 - State agencies cannot hire contract lobbyists.
 - Must register & report.
 - Cannot give gifts to legislators or legislative employees.
- Lobbyists, lobbyist principals, & liaison personnel can ask for advice & advisory opinions. Commission must share unredacted copy with Secretary of State’s Office.

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Exemptions from Lobbying Law

(G.S. 120C-700)

Except for miscellaneous reporting requirements in Art. 8 of Ch. 120C, the lobbying law does not apply in the following situations:

- Individuals expressing personal opinions.
- Persons appearing before committees, etc. by invitation.
- Elected or appointed officials or employees of the State, U.S., county, municipality, school district, or other governmental agency when appearing in connection with matters pertaining to their office or public duties.

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- Persons performing professional services (e.g., bill drafting or giving legal advice
- Persons engaged in acquisition & publication of the news.
- Legislators, legislative employees, & public servants while acting in their official capacities.
- Persons responding to inquiries from legislators, legislative employees, or public servants.
- Political committees & their employees or contracted service providers.

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Other Laws, Rules, Regulations

In addition to the State Government Ethics Act & Lobbying Law, always think about & check for the applicability of other laws:

- G.S. 133-32: Gifts To/From Contractors
- G.S. 14-234: "Self-Dealing" Statute
- Agency or Departmental Rules or Policies
- Also federal laws may apply, e.g. "honest services" statute.

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WRAP UP...

GIFTS	CONFLICTS OF INTEREST	SEI's
<p>Am I a public servant?</p> <ul style="list-style-type: none">■ Who is giving it?■ Is it a "gift"?■ Is there an exception?■ Remember: The value of the gift doesn't matter.■ Remember: Even if there is an exception, your name and a description & value of the gift may be reported.	<ul style="list-style-type: none">■ Who would benefit?■ What is the benefit?■ Would it or could it be inferred that it would impair independent judgment?■ Is there a permitted participation exception?	<ul style="list-style-type: none">■ Answer all questions.■ Signed & notarized original.■ Due April 15th.

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PRESENTER

MARY SHUPING

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